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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,154	09/19/2003	Jim Edwards	PES 001	8729
7590	09/22/2004		EXAMINER LAU, TUNG S	
John P. Luther Esq. Newman & Newman Suite 610 505 Fifth Avenue South Seattle, WA 98104			ART UNIT	PAPER NUMBER
			2863	
DATE MAILED: 09/22/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/667,154

Applicant(s)

EDWARDS ET AL.

Examiner

Tung S Lau

Art Unit

2863

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4-26-2004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

1. The IDS filed on 4-26-2004 has been accepted and signed by the examiner.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9, 11-21, 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Hebrank (U.S. Patent Application Publication 2002/0014444).

Regarding to claim 1:

Hebrank discloses a dynamic continuous and/or semi-continuous or static product measurement, characterizing and identifying system for food stuffs and food product portions and other objects comprising a conveyor means for transport of product or object to be measured to one or more detection regions to detect information (page 1, section 0011-0013, fig. 3, unit 13, 2) comprising height, length, width, dimensional, spatial or topological characteristics, coloring characteristics (page 1, section 0004, page 2, section 0018-0019), and/or moisture content and/or weight and temperature (page 2, section 0018-0019) while conveyed products are in motion or static or a combination thereof on said conveying means (page 1, section 0011-0013, fig. 3, unit 13, 2).

Regarding to claim 13:

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Hebrank discloses apparatus for a dynamic continuous and/or semi-continuous or static product measurement, characterizing and identifying system for food stuffs and food product portions and other objects (page 1, section 0011-0013, fig. 3, unit 13, 2) comprising a conveyor means for transport of product or object to be measured to one or more detection regions to detect information comprising height, length, width, dimensional, spatial or topological characteristics, coloring characteristics (page 1, section 0004, page 2, section 0018-0019), and/or moisture content and/or weight and temperature (page 2, section 0018-0019) while conveyed products are in motion or static or a combination thereof on said conveying means (page 1, section 0011-0013, fig. 3, unit 13, 2).

Regarding to claim 25:

Hebrank discloses a method of conducting business comprising a dynamic continuous and/or semi-continuous product measurement, characterizing and identifying system and/or apparatus for food stuffs and food product portions and other objects comprising a conveyor means for transport of product or object to be measured to one ore more detection regions to detect information (page 1, section 0011-0013, fig. 3, unit 13, 2) comprising height ,length, width, dimensional, spatial or topological characteristics, coloring characteristics (page 1, section 0004, page 2, section 0018-0019), and/or moisture content and/or weight and temperature (page 2, section 0018-0019) while conveyed products

are in motion, static or a combination thereof on said conveying means (page 1, section 0011-0013, fig. 3, unit 13, 2).

Regarding to claims 2, 14, Hebrank discloses measuring rigid bulk food (abstract); Regarding to claims 3, 15, Hebrank discloses there are one or more discontinuities in the conveyor (fig. 3, unit 8); Regarding to claims 4, 16, Hebrank discloses the conveyor means extends through one or more detection regions in one or more planes perpendicular (fig. 5, unit 27, 2) or angled thereto, and further comprising computer means inclusive of data descriptive of the surface of the conveyor means where it extends through one or more detection regions (fig. 3, unit 40, 2, page 2, section 0017-0018); Regarding to claims 5, 17, Hebrank discloses the conveyor means is of a surface shape selected from the group consisting of substantially flat, concave in portions and convex in portions (fig. 4, unit 2); Regarding to claims 6, 18, Hebrank discloses the surface characteristics of the conveyor means form a reference database stored in a computer means to be compared to a transported sample product or product to be measured in one or more detection means (abstract, fig. 6, unit 610, 612); Regarding to claims 7, 19, Hebrank discloses reject product conveyor means and accept product conveyor means (fig. 12, section 722, 712, page 1, section 0004); Regarding to claims 8, 20, Hebrank discloses one or more 2-D or 3-D (fig. 12, unit 712, fig. 5, unit 2, 27, 17) dimensional and/or spatial characteristic measuring means effective to determine the length, width and height of an object and/or spatial or topological characteristics of an object (page 2, section 0017-0018); Regarding to

claims 9, 21, Hebrank discloses the 2-D or 3-D measuring means which is an optical scanning measuring device (page 2, section 0019, page 5, section 0060-0061); Regarding to claims 11, 23, Hebrank discloses a contact or non-contact heat or temperature sample detection means (page 2, section 0019, page 5, section 0060-0061, page 1, section 0011-0013); Regarding to claims 12, 24, Hebrank discloses dimensional/spatial measuring means and heat detection means is locatable in ring means surrounding said conveying means and rotatable to any desired angle to said conveying means while detecting product dimensions/spatial characteristics and temperature (fig. 5, unit 27, 17, 2, fig. 3, unit 13).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

a. Claims 10 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hebrank (U.S. Patent Application Publication 2002/0014444) in view of Hamid (U.S. Patent 4,106,340).


Hebrank discloses a system including the subject matter discussed above except determining weight, Hamid discloses determining weight (Col. 1 Lines 5-33), in order to have a rapid, accurate and reliable for sorting food and packaging (Col. 1 Lines 14-33).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Hebrank to have determining weight taught by Hamid in order to have a rapid, accurate and reliable for sorting food and packaging.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tung S Lau whose telephone number is 571-272-2274. The examiner can normally be reached on M-F 9-5:30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Barlow can be reached on 571-272-2269. The fax phone numbers for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TL


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